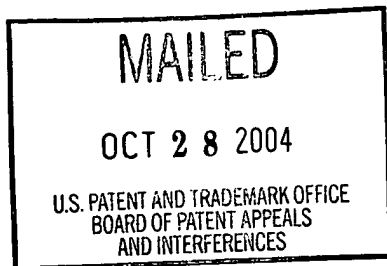


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**



Ex parte RALF ALLNER
and
THOMAS BIBER

Appeal No. 2004-2131
Application No. 10/016,719

ON BRIEF

Before FRANKFORT, NASE, and BAHR, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 2, 4 to 11 and 13, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to a device for balancing a radial threaded spindle eccentricity of a spindle drive to avoid blocking of the spindle drive during the lifting movement of a platform (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Bayne et al. (Bayne)	4,326,643	Apr. 27, 1982
Joffe	5,331,861	July 26, 1994

Claims 1, 2, 4 to 11 and 13 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bayne in view of Joffe.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the final rejection (mailed September 5, 2003) and the answer (mailed April 9, 2004) for the examiner's complete reasoning in support of the rejection, and to the brief (filed January 13, 2004) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 1, 2, 4 to 11 and 13 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

Claims 1 and 7, the independent claims on appeal, read as follows:

1. Device for balancing of radial eccentricity of a spindle drive (1) to avoid blocking of the spindle drive during lifting movement of a platform (2), comprising:

a platform for lifting objects (S) said platform being mounted by several bearing devices (L1; L2; L3; L4) respectively arranged on several axiparallel spindles (G1; G2; G3; G4), lifted axially along the spindles together, said bearing devices (L1; L2; L3; L4) having respective radial bearing clearances (F1; F2) in a polygonal arrangement; and

said bearing devices (L1; L2; L3; L4) being of a low-friction type, and arranged with radial bearing clearance (F1; F2) to balance the radial eccentricity of the rotating threaded spindle so that a relative radial movement of the rotating spindles to platform (2) with limited friction force is possible.

7. Device for balancing of radial eccentricity of a spindle drive (1) in order to avoid blocking of the spindle drive during lifting of a platform (2), comprising:

a platform for lifting objects (S) in a machine, said platform being mounted by several bearing devices (L1; L2; L3; L4) respectively arranged on several axiparallel spindles (G1; G2; G3; G4), lifted together with the bearing devices axially along the spindles, said bearing devices (L1; L2; L3; L4) each having an annular ball bearing (3) arranged concentrically around the spindles (G1; G2; G3; G4) by which a radial bearing clearance (F1; F2) can be produced between said platform (2) and the spindles to balance the threaded spindle eccentricity in low-friction fashion.

Bayne's invention relates in general to an apparatus for dispensing flat objects, said apparatus being particularly adapted for dispensing magnetic tickets. As shown in Figures 2 and 3, an elevator 22 which includes a platen 25 moves vertically in an opening 21 of ticket container 20 in order to support and locate a stack of tickets 26 so that the uppermost one of the tickets is in a position for dispensing. The elevator is powered by a reversible electric motor 27 which is mounted on the container 20. The motor has an output screw 30 which is threaded through floating nut 31 loosely

mounted in the elevator platen 25. The motor 27 is reversible so that the motor may turn the screw 30 either clockwise or counterclockwise to raise or lower the tickets. A guide shaft 32 is fixed to the container 20 with the platen slidable on the guide shaft. The action of the guide shaft 32 interacting with the screw 30 serves to keep the platen 25 mechanically aligned in the X, Y and Z coordinates.

Joffe's invention is directed to a rotatable drive mechanism for producing linear motion of an object. The rotatable drive mechanism includes driving and driven members, one of which is elongated, and which act cooperatively through frictional engagement to produce longitudinal motion of the driven member. The rotatable drive mechanism also includes a magnetic coupling having at least first and second magnetizable members with mutually facing flat annular surfaces, a set of balls disposed in a generally annular arrangement between those flat surfaces, and magnetic means attracting the magnetizable members to each other. Respective ends of the magnetic coupling are fixedly secured to the driven member and to the object, respectively. Since the elements of the magnetic coupling, in and of themselves, would permit relative rotation of parts, which is undesired, provision is also made for restraining the undesired rotation of any part of the magnetic coupling.

In the rejection under 35 U.S.C. § 103 before us in this appeal (final rejection, pp. 2-3), the examiner (1) ascertained that Bayne does not disclose the use of at least 3 rotatable threaded spindles; (2) ascertained that Bayne does not disclose the use of ball bearings to reduce the friction due to the lateral movements of the spindles; (3) concluded that it would have been obvious to one of ordinary skill in the art at the time the invention was made to use any number of spindles in the device of Bayne as such is merely a design choice; and (4) concluded that it would have been obvious to one of ordinary skill in the art at the time the invention was made to use ball bearings as taught by Joffe in the device of Bayne in order to allow for better operation of the device.

The appellants argue (brief, pp. 8-9) that the applied prior art does not suggest modifying Bayne to use several axiparallel spindles as set forth in claims 1 and 7. We agree.

All the claims under appeal require several axiparallel spindles. However, this limitation is not suggested by the applied prior art. In that regard, while Bayne does teach a single spindle, neither Bayne nor Joffe teach or suggest using several axiparallel spindles. To supply this omission in the teachings of the applied prior art, the examiner made a determination (final rejection, p. 2) that this difference would have

been obvious to an artisan as a design choice since the use of multiple spindle drives is a duplication of parts which is patentable only if unexpected results are discovered citing to MPEP § 2144.04 and In re Harza 274 F.2d 669, 124 USPQ 378 (CCPA 1960). There is no per se rule that duplication of parts would have been obvious at the time the invention was made to a person of ordinary skill in the art; application of such rule is improper, since it sidesteps the particularized obviousness inquiry required by 35 U.S.C. § 103 and necessarily produces erroneous results. Thus, the examiner's determination that it would have been obvious to an artisan to use multiple spindle drives in Bayne has not been supported by any evidence that would have led an artisan to arrive at the claimed invention.

In our view, the only suggestion for modifying Bayne in the manner proposed by the examiner to meet the above-noted limitation stems from hindsight knowledge derived from the appellants' own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).


For the reasons set forth above, the decision of the examiner to reject claims 1, 2, 4 to 11 and 13 under 35 U.S.C. § 103 is reversed.

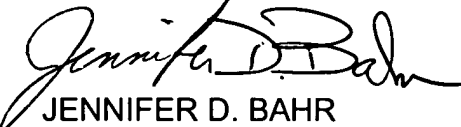
CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 2, 4 to 11 and 13 under 35 U.S.C. § 103 is reversed.

REVERSED


CHARLES E. FRANKFORT
Administrative Patent Judge


JEFFREY V. NASE
Administrative Patent Judge


JENNIFER D. BAHR
Administrative Patent Judge

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